

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4123 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT  
and  
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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DADBHAI NAGBHAI KAHOR

Versus

GUJARAT ELECTRICITY BOARD  
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Appearance:

MR BD KARIA for Petitioner  
MR RC JANI for Respondent No. 1  
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CORAM : MR.JUSTICE J.N.BHATT  
and  
MR.JUSTICE K.M.MEHTA

Date of decision: 17/08/2000

ORAL JUDGEMENT (Per J.N. Bhatt, J)

The only short question which has surfaced in this appeal under Section 96 of the Code of Civil Procedure is as to whether the appellant-original defendant is liable to pay minimum electric consumption charges pursuant to agreement entered into between the parties 12.3.1992 under which the electric connection was installed in the oil mill factory premises of the appellant or not?

2. The following facts may be highlighted which are not in dispute. That the respondent Gujarat Electricity Board instituted a Regular Civil Suit No. 40 of 1995 against the appellant-original defendant for the recovery of an amount of Rs. 2,87,726.11ps on the premise that the original defendant has failed to honour the contractual commitment in paying the minimum electric consumption charges agreed upon for a spell of two years from the date of the connection.

3. The electric connection was given pursuant to the agreement dated, 12.3.1992 on 15.1.1993, in the oil mill-factory premises of the appellant-defendant and that the amount of Rs. 2,87,726.11ps claimed in the suit is due and not paid.

4. The only contention raised by the original defendant in the written statement, which is not, rightly, accepted by the trial court, is that on account of economic constraint and financial difficulty, the original defendant could not consume electricity more than the minimum amount agreed to be paid for a period of two years. This ground is again reiterated before us for being rejected for obvious reason. It is true that the defendant intimated the plaintiff Gujarat Electricity Board that the Mill could not be run on account of ill-health of the market as well as ill-health of the persons in-charge of the Mill. This action was unilateral which was objected to by the plaintiff Gujarat Electricity Board and rightly, so. None of the terms and conditions incorporated and articulated in agreement between the parties referred about such contingency. It means that irrespective of the commencement of the business or running of the mill, the solemn contractual assurance offered to and accepted by the defendants cannot be permitted to be resiled from and it is the duty of the defendant to pay the minimum charges according to the claim made in the suit for two years and the contention that he has not used the electricity on the aforesaid ground is not, legally, tenable. Therefore, the Trial Court, rightly, decreed the suit for the aforesaid amount with interest at the rate of 12% against

the claim of interest at the rate of 18% of the Gujarat Electricity Board by passing judgement and decree dated 25.3.1997 and we do not find any justification, whatsoever, after having heard learned counsel for the parties and considering the copies of evidence which were placed before us in course of hearing, to interfere with the order passed by the learned Civil Judge (S.D.), Amreli, in exercise of power under Section 96 of the Code.

In the result, the appeal is required to be dismissed at the threshold. Accordingly, it is dismissed.

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